IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13700 of 2004

to

SPECIAL CIVIL APPLICATIONNo 13702 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHREE BORDI SEVA SAHAKARI MANDALI LTD.

Versus

TINABHAI BHIKHABHAI

Appearance:

1. Special Civil Application No. 13700 of 2004

MR BAIJU JOSHI for Petitioner No. 1

MR JT TRIVEDI for Respondent No. 1

MR BJ TRIVEDI for Respondent No. 1

MS JIGNASA B TRIVEDI for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 17/02/2005

COMMON ORAL JUDGEMENT

#. In these petitions filed under Article 226/227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order dated 10.6.2004 passed by the Secretary (Appeals), Revenue Department, State of Gujarat in Revision Application Nos.3, 4 and 5 of 2003 by which the revisional authority has partly allowed the aforesaid revision applications by quashing and setting aside the notices with regard to auctioning of the property in question dated 3.10.2003 and 14.11.2003 and further passed the order to consider the request of the respondent - original debtor to pay the entire amount due and payable according to him and thereafter if the said amount is not paid, to proceed further in accordance with law.

#. Apart from the merits of the case, Mr.Joshi, learned advocate appearing for the petitioners has submitted that inspite of the fact that the petitioners were vitally interested and affected parties, the petitioners were not joined as party - respondents in the aforesaid revision applications and though the applications were submitted for allowing them to be joined as party respondents, without deciding the said applications, final order came to be passed by the Secretary (Appeals) and that too without giving opportunity to the petitioners.

#. It is the case of the petitioners that the petitioners are creditors and the respondent - original debtor had taken a loan from the petitioner - society and according to the petitioners, as such in pursuance of the notices dated 03.10.2003 and 14.11.2003, the auction was already held on 14.11.2003 and the same was already completed and the person in whose favour the offer was accepted deposited 25% of the amount on the same day and rest of 75% amount deposited after 7 to 8 days and according to the petitioner, the possession of the property in question also came to be handed over to the respective purchaser. It is submitted that all these aforesaid facts were pointed out by the petitioners in the applications for joining party and without considering the same and without giving opportunity to the petitioners, the impugned order has been passed and therefore, requested to allow the present special civil applications remanding the matters to the Secretary (Appeals) to decide and dispose of the same after giving opportunity to the petitioners.

#. In response to the notice issued by this Court, Mr.J.T.Trivedi, learned advocate appears on behalf of the original revisionist in Special Civil Application no. 13700 and 13702 of 2004 and so far as Special Civil Application no. 13701 of 2004 is concerned, though served no body appears on behalf of the original revisionist. He has raised number of submissions and contentions on merits but in view of the fact that this Court proposes to remand the matters to the Secretary (Appeals), this Court is not at present going to decide the merits of the case and not deciding anything either in favour of the petitioners or in favour of the respondents. However, Mr.Trivedi has disputed the factum of taking over the possession by the purchasers. However, in view of the fact that this court is not considering anything on merits of the case, the aforesaid question is also not decided by this Court.

#. Considering the facts and circumstances of the case, more particularly, considering the fact that the amount was due and payable by the original revisionist to the petitioner - society and that according to the petitioner - society, the auction was already over and the possession was already taken which was pointed out in the applications for joining party, it cannot be said that the petitioners are not interested party in the proceedings and / or affected party. On the contrary, the revisional authority ought to have allowed the applications submitted by the petitioners and thereafter ought to have decided and disposed of the revision applications after giving opportunity to the petitioner society. In view of the fact that the impugned orders came to be passed without hearing the petitioners and allowed the said revision applications by quashing and setting aside the notices dated 03.10.2003 and 14.11.2003, the impugned judgment and orders passed by the Secretary (Appeals) are required to be quashed and set aside by remanding the matters to the Secretary (Appeals) for deciding the same afresh in accordance with law after giving opportunity to the parties inclusive of the petitioner - society by allowing the petitioners to be joined as party respondents in the aforesaid three revision applications. However, it is made clear that this court has not expressed anything on merits of the case and it is ultimately for the revisional authority to decide and dispose of the revision applications on merits and in accordance with law.

#. For the reasons stated above, these petitions are partly allowed. The impugned judgment and orders passed

by the Secretary (Appeals) dated 10.06.2004 in Revision Application Nos. 3, 4 and 5 of 2004 are hereby quashed and set aside and the matters are remanded to the Secretary (Appeals) to decide and dispose of the same afresh on merits and in accordance with law after giving opportunity to the parties by allowing the applications submitted by the petitioners for joining them as party respondents within a period of three months from the date of the receipt of the writ of this order.

#. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah,J)

(pathan)